IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.9 OF 2004

Smt.Sushila N. Shah & ors. .. Petitioners

versus

Smt.Sumitra Vithal Shah & ors. .. Respondents

...

Mr.R.S. Datar for the petitioners.

Mr.N.V. Gangal for respondent no.1.

Mr.A.P. Vanarse AGP for the State.

CORAM : D.G. KARNIK, J

DATED : 5th September 2006

P.C.:

1. Heard learned counsel for the parties.

2. This Contempt Petition is filed alleging that the respondents have committed breach of the undertaking given to the Court by the respondents on

24th March 2004, copies of which are filed at Exhibit-H to this petition. By the said undertaking, respondents undertook to vacate the suit premises on or before 30th September 2006. Subsequently, respondents applied to this Court for extension of time and time was extended upto 30th November 2005 by an order dated 24th October 2005, subject to the respondents filing further undertaking. Undertakings to vacate the premises by 30th November 2005 were filed by the respondents on 26th October 2005, copies of which are filed at Exhibit-O to the petition.

3. According to the petitioners, respondents did not vacate the premises on 30th November 2005 despite the said undertakings at Exhibit-O to the petition. Respondent no.1 filed a civil suit, bearing St. No.356 of 2005, for injunction alleging that the decree was obtained by fraud. No injunction was granted by the Court. However during the pendency of the suit, respondents offered to give possession of the suit premises by handing over the key of the suit premises to the petitioners by 30th November 2005. That was not accepted by the petitioners. In the circumstances, it cannot be said that the respondents have deliberately committed breach of any undertaking given to this

Court.

4. As regards the suit bearing St no.356 of 2005, the same has been dismissed. Respondents have filed an appeal bearing Civil Appeal no.12 of 2006 which is pending in the District Court, Palghar. The respondents through their counsel Mr.Gangal undertake to this Court that they would withdraw the Civil Appeal no.12 of 2006 pending in the District Court, Palghar within a period of four weeks. Undertaking is recorded and accepted.

5. Mr.Gangal states that the petitioners have already received the possession of the suit premises and respondents could not claim back possession of the suit premises from the petitioner. In view of this, no further action needs to be taken.

6. For these reasons, the Contempt Petition is disposed of.

(D.G. KARNIK, J)